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STATE CAPITOL
PHOENIX, ARIZONA

March 24, 1966

DEPARTMENT OF LAW LETTER OPINION NO. 66-18-L (R-55)

REQUESTED BY: The Honorable Lloyd D. Brummage
PINAL COUNTY ATTORNEY

QUESTION: Is a lien for personal property taxes
attaching to real estate after a realty
mortgage was recorded superior to
the mortgage lien?

ANSWER: No.

The applicable statute is A. R. S. Sec. 42-312:

"A. Every tax levied upon real or personal property shall be a lien upon the property assessed.

B. The lien shall attach on the first Monday in January each year, and shall not be satisfied or removed until the taxes, penalties, charges and interest are paid or the property has finally vested in a purchaser under a sale for taxes. The lien shall be prior and superior to all other liens and encumbrances upon the property, except liens or encumbrances held by the state.

C. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property, and a judgment against real property for nonpayment of taxes thereon or assessed to the personal property of the same person, shall not be prevented by a

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showing that the owner thereof was possessed of personal property from which the taxes could have been made, but real property occupied as a homestead shall not be charged for taxes other than taxes due on the homestead. "

The question of whether or not a personal property tax lien attaching to real estate after the realty mortgage was recorded takes precedence over the realty mortgage involves the construction of A. R. S. Sec. 42-312. The Arizona Supreme Court has consistently held that the lien of a realty mortgage recorded prior to the time that the personal property tax lien became effective takes precedence over the lien for personal property taxes. Walker v. Nogales Bldg. & Loan Assn., 28 Ariz. 484, 237 Pac. 1094; Maricopa County v. Equitable Life Assurance Society of United States, 42 Ariz. 569, 28 P. 2d 821; Homeowners' Loan Corp. v. Phoenix, 51 Ariz. 455, 77 P. 2d 818; Maricopa County v. City of Phoenix, 55 Ariz. 62, 98 P. 2d 469. The last two cases cited were decided under a statute substantially the same as A. R. S. Sec. 42-312. Accordingly, it is our opinion that a personal property tax lien is inferior to the lien of a previously recorded mortgage on real property. The personal property tax lien would, of course, be superior to the lien of realty mortgages recorded after the effective date of the personal property tax lien.

Respectfully submitted,

Darrell F. Smith

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The Attorney General

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